

## **DEPOSITION OF ARTHUR L. SUMBRY**

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
EASTERN DIVISION

A rectangular stamp with the word "COPY" in bold, uppercase letters. To the left of the word is a small square containing the letter "C".

DAVID DAVIS,

Plaintiff,

vs.

CASE NO. 3:06-CV-0054-VPM

CITY OF PHENIX CITY, ALABAMA,

et al.,

Defendants.

\* \* \* \* \*

DEPOSITION OF ARTHUR L. SUMBRY, taken pursuant  
to stipulation and agreement before Shannon M.  
Williams, Certified Court Reporter and Commissioner  
for the State of Alabama at Large, in the offices of  
City Hall, 601 12th Street, Phenix City, Alabama, on  
Wednesday, November 7, 2007, commencing at  
approximately 10:28 a.m. EST.

\* \* \* \* \*

1 APPEARANCES

2 FOR THE PLAINTIFF:

3 THOMAS A. WOODLEY  
4 Woodley & McGillivary  
5 1125 15th Street N.W.  
6 Suite 400  
7 Washington, D.C. 20005

8 FOR THE DEFENDANTS:

9 JAMES P. GRAHAM, JR.  
10 712 13th Street  
11 P.O. Box 3380  
12 Phenix City, Alabama 36868-3380

13 JAMES R. MCKOON, JR.  
14 McKoon & Associates  
15 925 Broad Street  
16 P.O. Box 3220  
17 Phenix City, Alabama 36868-3220

18 ALSO PRESENT:

19 Cole Dugan  
20 Wallace Hunter  
21 H.H. Roberts

22 EXAMINATION INDEX

23 BY MR. WOODLEY

24 4

## 1 STIPULATIONS

2 It is hereby stipulated and agreed by and  
3 between counsel representing the parties that the  
4 deposition of ARTHUR L. SUMBRY is taken pursuant to  
5 the Federal Rules of Civil Procedure and that said  
6 deposition may be taken before Shannon M. Williams,  
7 Certified Court Reporter and Commissioner for the  
8 State of Alabama at Large, without the formality of  
9 a commission; that objections to questions other  
10 than objections as to the form of the questions need  
11 not be made at this time but may be reserved for a  
12 ruling at such time as the deposition may be offered  
13 in evidence or used for any other purpose as  
14 provided for by the Federal Rules of Civil  
15 Procedure.

16 It is further stipulated and agreed by and  
17 between counsel representing the parties in this  
18 case that said deposition may be introduced at the  
19 trial of this case or used in any manner by either  
20 party hereto provided for by the Federal Rules of  
21 Civil Procedure.

22 \* \* \* \* \*

1                                   ARTHUR L. SUMBRY

2                   The witness, having first been duly sworn  
3                   or affirmed to speak the truth, the whole truth and  
4                   nothing but the truth, testified as follows:

5                                   EXAMINATION

6           BY MR. WOODLEY:

7               Q.   Mr. Sumbry, could you please state your  
8               full name for the Record?

9               A.   Arthur L. Sumbry.

10              Q.   Spelled S-U-M-B-R-E-Y?

11              A.   Just B-R-Y.

12              Q.   B-R-Y, okay. Just a couple of preliminary  
13              points before I get into some substantive questions  
14              that I want to ask you about. My name is Tom  
15              Woodley, W-O-O-D-L-E-Y, and I'm one of the attorneys  
16              representing the plaintiff, David Davis, in this  
17              court action that's been filed against the City of  
18              Phenix City and also against two individual  
19              defendants, Chief Hunter and City Manager Roberts.  
20              And have you had an opportunity to spend some time  
21              perhaps with Mr. McKoon to discuss the nature of  
22              this court action?

23              A.   No.

24              Q.   You have not?

25              A.   No.



1 Q. Okay. Have you ever had your deposition  
2 taken before?

3 A. Yes.

4 Q. More than once?

5 A. I know in federal court, Sumbry versus  
6 Russell County.

7 Q. Okay. So do you have a general  
8 understanding of the procedures we'll be following  
9 here in this deposition?

10 A. No, I don't.

11 Q. You don't? Okay. Well, I'm going to be  
12 asking you some questions and, to the best of your  
13 ability, we want you to respond and answer those  
14 questions. And if at any time you don't hear or  
15 understand any of my questions, stop me and let me  
16 know that, and I'll be glad to repeat or rephrase  
17 those questions. Do you understand that, sir?

18 A. Yes.

19 Q. And you'll have to wait until I complete my  
20 question and then start with your answer, because we  
21 have this most valuable player court reporter here,  
22 and she's going to be taking down everything that we  
23 say here today. Do you understand that?

24 A. Uh-huh.

25 Q. And then you'll have a chance, if you want,

1 to look at the transcript of your deposition today  
2 and review it to make sure it's correct. Do you  
3 understand that?

4 A. Yes.

5 Q. And, of course, you've just been sworn  
6 under oath, so you're obligated to tell the truth.  
7 Do you understand that?

8 A. Yes.

9 Q. As I understand, you're a city council  
10 member?

11 A. Yes, I am.

12 Q. How long have you held that position?

13 A. Twenty-two and a half years.

14 Q. Those are four-year terms?

15 A. It was three years when I first started.

16 Q. And now they're currently four years?

17 A. Now they're four years, uh-huh.

18 Q. And what, basically, are the duties and  
19 responsibilities of a council member?

20 A. Well, I represent District Three.

21 Q. District Three here in Phenix City?

22 A. Yes, I do.

23 Q. And is the council considered the  
24 legislative body the city?

25 A. Yes, uh-huh.

1 Q. And is it your understanding that the city  
2 manager, Mr. Roberts, is considered essentially the  
3 chief executive officer of the city?

4 A. Yes, I do.

5 Q. And is he in charge and has full  
6 responsibility with regard to employment conditions  
7 and the employees who work for the city?

8 A. Yes, he do.

9 Q. Do you play any role as a council member  
10 with regard to the employees of the city?

11 A. No, I don't.

12 Q. Let me invite your attention back to -- if  
13 I may, back to the month of April 2006. And there  
14 was apparently a proposed ordinance that came before  
15 the city council, which suggested the enlargement of  
16 the probationary period for firefighters and police  
17 officers and code enforcement officers, expanding  
18 the probation period from one year to 18 months. Do  
19 you remember that proposed ordinance?

20 A. No, I don't.

21 Q. You don't?

22 A. Huh-uh.

23 Q. Okay. Do you remember having a  
24 conversation with David Davis, my client, concerning  
25 the subject of a proposed ordinance expanding the



1 probationary period?

2 A. I don't remember that either.

3 Q. You don't?

4 A. No, sir.

5 Q. You don't remember that he perhaps gave you  
6 a telephone call and weighed in on behalf of his  
7 union members against the proposed ordinance?

8 A. Can I give you a answer?

9 Q. Yes, sure.

10 A. Really, when a client come to me, I tell  
11 them they have to see the city manager; I'm not  
12 hiring and I don't fire. So I don't get involved in  
13 that.

14 Q. Well, my question really was related to  
15 this expansion of the probationary period. And I  
16 know you don't have a lot of recollection about  
17 that. But it's my understanding that David Davis  
18 had a chance to call you up and talk to you about  
19 expanding the probationary period in the fire  
20 department. Does that ring a bell at all to you?

21 A. No, it doesn't.

22 Q. Doesn't? As a council member, do you have  
23 sort of an open door policy where you welcome  
24 citizens to contact you and speak about issues of  
25 concern?

1 A. I do.

2 Q. Have you maintained that for the 22 years  
3 you've been a council member?

4 A. Yes, I have.

5 Q. And would that include city employees as  
6 well? You welcome them to contact you if they have  
7 any concerns about city issues?

8 A. Well, I talk to them, but I tell them --  
9 refer my questions back to the city manager.

10 Q. But do you talk to them on occasion?

11 A. Yes, sir.

12 Q. Have you talked to David Davis about any  
13 issue relating to the fire department at any time?

14 A. Not that I remember, sir.

15 Q. What about any other firefighters? Have  
16 you had any conversations with other firefighters  
17 about fire department issues?

18 A. No.

19 Q. You don't remember any?

20 A. No.

21 Q. Did it come to your attention in April of  
22 2006 that David Davis, who was an eight-year veteran  
23 of this fire department, was terminated largely  
24 because he had a contact with Mayor Hardin?

25 A. No.

1 Q. That was never brought to your attention?

2 A. Not to my attention.

3 Q. Do you know that today, that he was fired?

4 A. No, I don't.

5 Q. Do you know who David Davis is?

6 A. No, I don't.

7 Q. If he was sitting here today, you wouldn't  
8 recognize him?

9 A. I couldn't recognize him.

10 Q. Have you ever heard that he was an  
11 eight-year veteran of this fire department?

12 A. No, I haven't.

13 Q. Now, do you have another occupation besides  
14 being a city council member?

15 A. Yes, I do.

16 Q. What would that be?

17 A. Mortician.

18 Q. I'm not going to tell any death or  
19 mortician jokes here. That wouldn't be appropriate,  
20 right? You've probably heard them all anyway.

21 A. Yes.

22 Q. Is that a family business, sir?

23 A. It is.

24 Q. Okay. Are you aware that the firefighters,  
25 at some point in time, formed a union of

1 firefighters?

2 A. No, I'm not.

3 Q. Are you aware that police officers have a  
4 union?

5 A. No, I'm not.

6 Q. Now, as I understand it, the city council  
7 meets -- is it every other week?

8 A. First and third Tuesday. First and third  
9 Tuesday.

10 Q. And do citizens have an opportunity to  
11 address the council on issues?

12 A. They do.

13 Q. Is that usually done in the work sessions?

14 A. Mostly work sessions.

15 MR. WOODLEY: I don't think I have any  
16 further questions. Thank you, Mr. Sumbry.

17 MR. MCKOON: You can go. Thank you so much  
18 for coming.

19 (The deposition concluded at 10:34 a.m.)

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